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SENATE

REPORT
99-396

INTEGRITY IN POST-EMPLOYMENT ACT

AUGUST 12 (legislative day AUGUST 11), 1986.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

ORIGINAL

together with

MINORITY VIEWS

[To accompany S. 2334, as amended]

The Committee on the Judiciary, to which was referred the bill (S. 2334) to amend section 207 of title 18, United States Code, to prohibit Members of Congress and officers and employees of any branch of the United States Government from attempting to influence the United States Government or from representing or advising a foreign entity for a proscribed period after such officer or employee leaves Government service, and for other purposes.

CONTENTS

		Page
I.	Text of S. 2334, as amended	2
II.	Purpose of S. 2334	7
III.	Legislative history of S. 2334	8
IV.	Statement of Purpose—Compromise Substitute	11
V.	Discussion of post-employment restrictions	13
VI.	Section-by-section analysis	20
VII.	Agency views	29
VIII.	Cost of the Legislation	31
IX.	Regulatory impact statement	32
X.	Changes in existing law	32
XI.	Minority views of Mr. Charles McC. Mathias, Jr.	41

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I. Text of S. 2334, As Amended

SECTION 1. SHORT TITLE.

This Act may be cited as the "Integrity in Post Employment Act of 1986".

SEC. 2. STRENGTHENING THE CURRENT PROVISIONS OF SECTION 207 OF TITLE 18.

(a) Increased Penalty for Willful Violation.—The matter after subsection (c) beginning "shall be fined" is amended by inserting after the period at the end thereof the following: "Whoever willfully violates subsection (a), (b), or (c) shall be fined not more than $250,000 or imprisoned not more than five years, or both.".

(b) Forfeiture of Illegal Proceeds.—The matter after subsection (c) beginning with "shall be fined", as amended by subsection (a) of this section, is further amended by inserting at the end thereof the following: "Any proceeds received in violation of the provisions of subsection (a), (b), or (c) shall be subject to forfeiture to the United States in a civil action brought by the Attorney General.".

(c) Removal of Office of Government Ethics Authority.—(1) Section 207 of title 18, United States Code, is amended by striking out subsection (e).

(2) Subsections (f) through (j) of section 207 of title 18, United States Code, are redesignated as subsections (e) through (i), respectively.

(d) One-Year Prohibition on Contact with Federal Government for High Level Officials and Inclusion of All Officers or Employees of the Three Branches of Government Employed at or Above GS–16 in Current Provisions.—(1) Subsection (c) of section 207 of title 18, United States Code, is amended to read as follows:

"(c) Whoever, other than a special Government employee who serves for less than 120 days in a period of 365 consecutive days—

"(1) having been so employed as specified in paragraph (1) of subsection (d) of this section, within one-year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, for compensation, financial gain, or other renumeration to—

"(A)(i) the department, agency, or other entity in which the person served as an officer or employee;

"(ii) the Congress if the person was employed by the Congress; or

"(iii) the court if the person was employed by the judicial branch, and

"(B) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

"(C) which is pending before the department, agency, entity, Congress, or court or in which the department,

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agency, entity, Congress, or the court has a direct and substantial interest, or

"(2) having been so employed as specified in paragraph (2) of subsection (d) of this section, within eighteen months after termination of employment, with the intent to influence makes any oral or written communication to any Member of Congress, officer or employee of the United States, including a special Government employee, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States, or an officer or employee of a Government corporation, Government controlled corporation, or an independent establishment as defined in section 104 of title 5, on behalf of another person (other than the United States) for compensation, financial gain, or other remuneration—".

(2) Subsection (d) of section 207 of title 18, United States Code, is amended by redesignating paragraph (2) and paragraph (3) and striking out paragraph (1) and inserting in lieu thereof the following:

"(1) Subsection (c)(1) of this section shall apply to any employee of the Congress, officer or employee of the United States, including a special Government employee, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States, or an officer or employee of a Government corporation, Government controlled corporation, or an independent establishment as defined in section 104 of title 5—

"(A) employed at a basic rate of pay equal to or greater than the basic rate of pay for GS-16 of the General Schedule as prescribed by section 5332 of title 5; or

"(B) employed on active duty as a commissioned officer of a uniformed service assigned to pay grade of O-7 or above as described in section 201 of title 37.

"(2) Subsection (c)(2) of this section shall apply to any person—

"(A) employed in a position listed in section 5312, 5313, or 5314 of title 5 or under section 105(a)(2)(A) of title 3; or

"(B) who serves as a Member of Congress; or

"(C) who serves as a judge of the United States as defined in section 451 of title 28.".

(e) POWER TO ENJOIN VIOLATIONS OF SECTION 207.—Section 207 of title 18, United States Code, is amended by inserting at the end thereof the following new subsection:

"(j) A violation of this section may be enjoined at the suit of the Attorney General.".

SEC. 3. REPRESENTATION OF FOREIGN GOVERNMENTS.

(a) INCLUSION OF ACTIVITIES IN THE FOREIGN AGENTS REGISTRATION ACT.—Section 2 of the Foreign Agents Registration Act of 1938, as amended, is amended by inserting at the end thereof the following:

"(g)(1) In addition to the registration requirements of subsections (a) through (e) of this section, any officer or employee of the United States as identified in subsection (d)(2) of section 207 of title 18, United States Code, shall be required in any statement filed under this section to—

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"(A) disclose the identity and nature of any foreign principal for which such officer or employee acts as an agent, representative, employer, or servant;

"(B) disclose the frequency of contact with such foreign principal;

"(C) disclose the actions taken or intended to be undertaken to influence Members of Congress or officers or employees of the United States on behalf of such foreign principal; and

"(D) include a declaration that the registrant has not disclosed confidential Government information or tactics.

"(2) Whoever knowingly and willfully falsifies, conceals or covers up any trick, scheme, or device any information required by this subsection to be included in a registration statement shall be fined not more than $10,000 or imprisoned not more than five years, or both.".

(b) DISCLOSURE OF INTERNATIONAL TRADE NEGOTIATIONS.—This subsection to be redrafted and included at a later date.

(c) THREE-YEAR BAN ON HIGH LEVEL OFFICIALS REPRESENTING FOREIGN ENTITIES AND A TWO-YEAR BAN FOR OFFICERS AND EMPLOYEES AT OR ABOVE GS–16.—(1) Subsection (c) of section 207 of title 18, as amended by section 2(d) of this Act, is further amended by—

(A) striking out the dash at the end of clause (2) and inserting in lieu thereof ", or"; and

(B) inserting after clause (2) the following:

"(3) having been so employed as specified in paragraph (1) of subsection (d) of this section, within two-years after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of a foreign entity for compensation, financial gain, or other remuneration to—

"(A)(i) the department, agency, or other entity in which the person served as an officer or employee;

"(ii) the Congress if the person was employed by the Congress; or

"(iii) the court if the person was employed by the judicial branch; and

"(B) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

"(C) which is pending before the department, agency, entity, Congress, or court or in which the department, agency, entity, Congress, or the court has a direct and substantial interest, or

"(4) having been so employed as specified in paragraph (2) of subsection (d) of this section within three years after such employment has ceased is—

"(A) employed by;

"(B) represents; or

"(C) advises,

a foreign entity for compensation, financial gain, or other remuneration—".

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(2) Subsection (d) of section 207 of title 18, United States Code, as amended by section 2(d)(2) of this Act, is amended by adding at the end thereof the following:

"(4) The prohibition provided in subsection (c) shall not apply to a Member, officer, or employee engaging only in—

"(A) the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of subchapter II of chapter 9 of title 22, United States Code, and such rules and regulations as may be prescribed thereunder;

"(B) activities in furtherance of bona fide religious, charitable, scholastic, academic, or scientific pursuits or of the fine arts; or

"(C) activities in furtherance of the purposes of an international organization of which the United States is a member.".

(3) Section 207 of title 18, United States Code, as amended by section 2(e) of this Act, is amended by adding at the end thereof the following:

"(k) For purposes of this section the term 'foreign entity' means—

"(1) a foreign country;

"(2) a foreign political party; or

"(3) a foreign organization substantially controlled by a foreign country or foreign political party.".

SEC. 4. DISCLOSURE OF DOMESTIC LOBBYING.

Section 207 of title 18, United States Code, as amended by section 3(c)(3) of this Act, is amended by inserting at the end thereof the following:

"(l)(1) No person having been employed as provided in subsection (d)(2) of this section shall lobby the United States on behalf of another person other than the United States unless he has filed with the agency or department in which such person served a true and complete registration statement and supplements thereto as required by this subsection. Except as provided in this subsection, every person who agrees to lobby on behalf of another person other than the United States shall, within ten days thereafter, file with the agency or department in which such person served, in duplicate, a registration statement, under oath on a form prescribed by the agency or department in which such person served. The obligation of a former Government official or employee to file a registration statement shall, after the tenth day after agreement to lobby, continue from day to day, and termination of such status shall not relieve such officer or employee from his obligation to file a registration statement for the period during which he lobbys the United States.

"(2) The registration statement required by paragraph (1) shall include the following which shall be regarded as material for the purposes of this section:

"(A) Registrant's name, former association with the agency or department, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses, if any;

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"(B) A comprehensive statement of the nature of registrant's business and a list of all clients employing the registrant to lobby; a complete list of registrant's employees and a statement of the nature of the work of each;

"(C) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is employed to lobby the United States; a comprehensive statement of the nature and method of performance of each such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant, including a detailed statement of any such activity which is a political activity;

"(D) The nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received within the preceding sixty days from each person the registrant, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received; and

"(E) Such further statements and such further copies of documents as are necessary to make the statements made in the registration statement and supplements thereto, and of documents furnished therewith, not misleading.

"(3) Every former Government employee or officer who has filed a registration statement required by this subsection shall, within thirty days after the expiration of each period of six months succeeding such filing, file with the agency or department in which such person served a supplement thereto under oath, on a form prescribed by the agency or department in which such person served, which shall set forth with respect to such preceding six months' period such facts as the agency or department in which such person served may deem necessary to make the information required under paragraph (1) accurate, complete, and current with respect to such period. If the head of the agency or department in which such person served determines that it is necessary to carry out the purposes of this subsection, the head may, in any particular case, require supplements to the registration statement to be filed at more frequent intervals in respect to all or particular items of information to be furnished.

"(4) The registration statement and supplements thereto shall be executed under oath.

"(5) The fact that a registration statement or supplement thereto has been filed shall not necessarily be deemed a full compliance with this subsection and the regulation thereunder on the part of the registrant; nor shall it indicate that the agency or department in which such person served has in any way passed upon the merits of such registration statement or supplement thereto; nor shall it preclude prosecution, as provided for in this subsection, for a willful failure to file a registration statement or supplement thereto when due or for willful false statement of a material fact therein or the willful omission of a material fact required to be stated therein or the willful omission of a material fact or copy of a material document necessary to make the statements made in a

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registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

"(6) The obligation to file statement under this subsection shall terminate five years after the registrant terminates Federal employment.

"(7) Any violation of this subsection shall be reported to the Attorney General by the Inspector General of the agency or department which learns of such violation.".

SEC. 5. EXCLUSION FOR ATTORNEYS APPEARING IN JUDICIAL PROCEEDINGS.

Section 207 of title 18, United States Code, as amended by section 4 of this Act, is amended by inserting at the end thereof the following:

"(m) The prohibitions of subsections (b) and (c) shall not apply to an attorney appearing in a judicial proceeding before a court of the United States.".

SEC. 6. EXEMPTION FROM PROHIBITIONS OF SECTION 207.

Section 207 of title, 18, United States Code, as amended by section 5 of this Act, is amended by inserting at the end thereof the following:

"(n)(1) Notwithstanding any other provision of this section, the Attorney General may grant an exemption from the prohibitions of subsections (a), (b), and (c) of this section to any individual for conduct occurring after the grant of such exemption if the Attorney General determines that such an exemption would—

"(A) serve the overriding public interest or general public welfare; or

"(B) the interests of the Federal Government.

"(2) Any exemption granted under paragraph (1) shall be published in the Federal Register—

"(A) prior to the grant of the exemption; and

"(B) at least once every six months while such exemption is in effect.".

SEC 7. EFFECTIVE DATE.

The amendments made by this Act shall—

(1) be effective six months after the date of enactment of this Act; and

(2) apply to any Member or employee of Congress, judge of the United States, employee of the judicial branch, or employee or officer of the Federal Government employed by any agency, department, or entity of the Federal Government on or after six months after the date of enactment of this Act.

II. PURPOSE OF S. 2334

S. 2334 strengthens the current law on post-employment activity by certain former Federal officials, applying limitations to advocacy contracts, such as lobbying or communication on behalf of paying clients. This legislation provides a uniform, straightforward, and enforceable way to prevent those who are employed by the Federal Government from leaving public service and marketing their access and influence for private gain.

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S. 2334 distinguishes between representation of domestic entities and representation of foreign entities by former Federal employees and officials. The restrictions that apply to foreign entity representation are stronger in nature and longer in duration. These tougher restrictions will help eliminate violations of the public trust by ensuring that high-ranking Federal officials and Members of Congress, who by the nature of their positions are privy to some of this Nation's most sensitive information, will not vend that information to a foreign entity for personal gain.

This legislation will set the ethical standard that is expected of one who has served in the Federal Government; it will underscore confidence in Govenment by making that standard and its application clear; and, it will help protect the Government from potential misuse of sensitive information.

III. Legislative History of S. 2334

The "Integrity in Post-Employment Act" S. 2334, was introduced by Senator Strom Thurmond (R-S.C.) on April 17, 1986.

The legislation addressed 2 major concerns: (1) that some former Federal employees were using their access and influence, gained through government service, for personal financial gain; and (2) that some former employees were using sensitive information, vital to national interests, for financial gain by directly or indirectly sharing this information with foreign interests.

Senator Thurmond saw clear threats arising out of these concerns: (1) damage to the integrity of Government, as undue and improper influence was brought to bear on decisionmaking processes; (2) an erosion of public confidence in the operation of the Government, as the American people sensed some former employees were exerting, or at the very least appeared to be exerting, improper influences on current Government decisions; and (3) jeopardy to the national interests as some former employees advised foreign clients based on sensitive information gained when these employees had been in positions of trust with the Federal Government.

S. 2334, as introduced by Senator Thurmond provided for:

(1) Representation of a domestic entity.—A one year restriction, after termination of employment, applying to all Federal employees and Members of Congress, banning any oral or written communication to Congress or any other branch of the Federal Government on behalf of a domestic entity, with the intent to influence for compensation or other remuneration.

(2) Representation of a foreign entity.—A two year ban, after termination of employment, applying to all Federal employees of every branch and Members of Congress, prohibiting (a) employment by, advising, representing or assisting any foreign entity for compensation or remuneration, or (b) with intent to influence, making an oral or written communication to Congress or any branch of Government on behalf of a foreign entity for compensation.

(3) Lifetime ban.—A lifetime proscription applying to those individuals in the Executive branch having been employed in or currently serving in positions listed in Section 5312 or 5313 of title 5 (top three executive levels) or under Section

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105(a)(2)(A) (top White House officials) of title 3, which prohibits (a) being employed by, representing, advising or assisting in any way a foreign entity whether or not for compensation, (b) making oral or written communications to Congress or any other branch of the Federal Government on behalf of the foreign entity with or without compensation.

The bill was referred to the Committee on the Judiciary where two hearings were held. The first of these hearings, chaired by Chairman Strom Thurmond was held on April 29, 1986. The witnesses included Senator David Boren (D-Okla.); Senator David Pryor (D-Ark.); John C. Kenney, Deputy Assistant Attorney General, Criminal Division, Department of Justice; and David H. Martin, Director of the Office of Government Ethics.

The second hearing, again chaired by Chairman Thurmond, was held on June 18, 1986. The witnesses included Stephen S. Trott, Assistant Attorney General, Criminal Division, Department of Justice; Michael G. Kozak, Principal Deputy Legal Advisor, Department of State; H. Lawrence Garrett III, General Counsel, Department of Defense; John F. Banzhaf, Professor, George Washington University School of Law; Benjamin R. Civiletti, Venable, Baetjer, Howard & Civiletti; Lloyd Cutler, Wilmer, Cutler & Pickering; Ann McBride, Senior Vice President, Common Cause; Norman J. Ornstein, Political Scientist, American Enterprise Institute; Carol Bonosaro, Executive Director, Senior Executives Association; and Morton H. Halperin, Director, Washington National Office, and Jerry Berman, Chief Legislative Counsel, American Civil Liberties Union.

Eight Senators joined as cosponsors on June 14, 1986. Those included as cosponsors were Senators Howard M. Metzenbaum (D-Ohio), Arlen Specter (R-Pa.), Howell T. Heflin (D-Ala.), Alan K. Simpson (R-Wyo.), David L. Boren (D-Okla.), David Pryor (D-Ark.) Paul Simon (D-Ill.), and Patrick Leahy (D-Vt.).

S. 2334 came up for consideration by the full committee on June 19, 1986, at which time Chairman Thurmond proposed a substitute amendment for Senator Howard M. Metzenbaum, Senator Paul Simon, and himself. Among other provisions, the proposed substitute contained the following:

(1) Domestic Lobbying Restrictions.—

a. A prohibition applicable to Members of Congress for two years and those compensated at or above GS-15 (Government Service level) for one year from lobbying anywhere in the Government;

b. A prohibition applicable to those compensated between GS-11 and GS-14 from lobbying any department or agency for which they worked within one year after such employment has ceased;

c. Retention of the lifetime ban at 18 U.S.C. 207(a); and

d. Repeal of the remaining provisions of 18 U.S.C. 207.

(2) Foreign Representation Restrictions.—

a. A ten-year prohibition applicable to specified high officials and a five-year prohibition applicable to Members of Congress from being employed by, advising, representing, or assisting a foreign entity, directly or indirectly, whether or not for compensation;

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b. A two-year prohibition applicable to those compensated at GS–11 or above from lobbying for, being employed by, advising, representing, or assisting a foreign entity in any way, directly or indirectly, for compensation, financial gain, or other remuneration; and

c. "Foreign entity" was defined as any foreign government, foreign political party, corporation or partnership organized under the laws of or having its principal place of business in a foreign country, or organized under the laws of the United States or having its principal place of business in the United States but controlled by a foreign entity or interest, or individual outside of the United States.

d. An exclusion enabling former government employees to work for charitable, religious, scholastic, academic, artistic, or scientific organizations, unless the organization's principal purpose is lobbying Congress.

The Judiciary Committee accepted this substitute amendment by voice vote. In the course of subsequent deliberations on the implications of these provisions, several Senators voiced concerns about the scope of the bill. After further deliberation, the Chairman appointed an ad hoc subcommittee composed of Senator Orrin G. Hatch (R–Utah) as Chairman, Senator Charles McC. Mathias (R–Md.), Senator Paul Laxalt (R–Nev.), Senator Joseph R. Biden (D–Del.), Senator Howard M. Metzenbaum (D–Ohio), and Senator Paul Simon (D–Ill.). This ad hoc subcommittee was charged with reviewing the bill in light of the concerns raised and reporting back to the Full Committee by June 24. Between June 19, 1986, and June 26, 1986, numerous meetings were held in which staff members of each ad hoc subcommittee member participated. Several hours of discussion were undertaken to address concerns and resolve differences.

On June 25, Senator Hatch submitted the report of the ad hoc subcommittee to Chairman Thurmond. The report included a substitute amendment to S. 2334.

In summary, the ad hoc subcommittee's recommendations were as follows:

1. Domestic Lobbying Restrictions.—

a. Strengthening of 18 U.S.C. section 207 to prohibit the top three Executive levels, top White House employees, Members of Congress, and judges and justices of the United States from lobbying government-wide for 18 months after termination of employment;

b. Strengthening of 18 U.S.C. section 207 to prohibit former government employees employed at a rate of pay equal to or greater than the basic rate of pay for the GS–16 level, or employed on active duty as a commissioned officer of a uniformed service assigned to a pay grade of 0–7 or above, from lobbying any former agency for one year after termination of employment with that agency;

c. An incorporation of 18 U.S.C. 207(a) and (b) and strengthening of those provisions with enhanced criminal and civil penalties for willful violations;

d. A requirement that all officials employed at a rate of pay equal to or greater than the basic rate of pay for the GS–16

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level, or employed on active duty as a commissioned officer of a uniformed service assigned to a pay scale of 0–7 or above, file disclosure statements if they intend to lobby the Government; and

e. Elimination of the authority of Office of Government Ethics to designate components within the same agency as "separate".

2. Foreign Representation Restrictions.—

a. Imposition of a three-year prohibition applicable to the same high level officials covered in 1. a. above and Members of Congress from being employed by a foreign entity;

b. A prohibition applicable to government employees employed at a rate of pay equal to or greater than the basic rate of pay for the GS–16 level, or employed on active duty as a commissioned officer of a uniformed service assigned to a pay grade of 0–7 or above, from lobbying their own agency or department on behalf of a foreign entity for two years;

c. "Foreign entity" was defined as a foreign government, a foreign political party, or a foreign organization controlled by a foreign government or foreign political party;

d. A waiver process proposed by Senator Simon under which former government employees may be exempted from the bill's restrictions when it is in the general public's interest or the Government's interest; and

e. A strengthening of the Foreign Agents Registration Act by requiring disclosure of matters handled for foreign clients.

The subcommittee's recommendations were intended to broaden the coverage of each aspect of existing ethics protections.

On June 26, 1986, the subcommittee's recommendations were offered as a substitute amendment by Senator Hatch during an executive session of the Committee on the Judiciary. The subcommittee's recommendations were then adopted by a voice vote of the Committee. Senator Mathias alone asked to be recorded in opposition to the bill. S. 2334 was thus ordered reported by Committee.

IV. Statement of Purpose-Compromise Substitute

S. 2334 strengthens section 207 of title 18, the Ethics in Government Act, by extending the proscriptions of section 207 to former Federal employees of the legislative and judicial branches in addition to those employed in the executive branch. The purpose of this bill is to protect the integrity of the decisionmaking process of the Government by imposing restrictions on the ability of former officials to leave government service and then improperly use access, influence, and information acquired during Government service for personal gain or profit. The public's confidence in its system of Government is eroded when former officials leave the Government and immediately begin lobbying or working for organizations or individuals with interests potentially adverse to those of the United States. The proscriptions this bill embodies will instill public confidence in those who perform Federal service by halting not just actual conflicts of interest, but appearances of conflicts as well.

There have been concerns that current provisions of law have not adequately addressed the problem. Mr. John C. Keeney, Deputy

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Assistant Attorney General, Criminal Division, U.S. Department of Justice, testified at the April 29, 1986, hearing that "ethical considerations and the ethical violations come up to and approach a criminal violation * * * it is conduct that you and I may not be proud of, but it is nonetheless conduct which is not within the presently drafted statutes * * * I think there are things that we could do with our current ethics laws." For example, section 207(a) of title 18, which has been narrowly construed by the courts, prohibits a former executive branch employee from acting as agent, or attorney for, or advocating to the Government on behalf of another concerning a "particular matter" involving specific parties on which the former officer worked "personally and substantially" while performing public service. This narrow ban, known as the "switching sides" proscription, applies to only a small number of situations.

Current laws forbid former employees from disclosing classified and some forms of confidential information. No law, however, bars a former employee from giving a client advice based on confidential information acquired during Government service. This poses the risk that prohibitions on disclosure of sensitive information can be defeated by former officials who scrupulously avoid disobeying the law, but nonetheless advise a client to pursue a strategy suggested by the former employee's special knowledge. This problem is further exacerbated by the prospect that a former top official can bring considerable influence and access to help effect that strategy by influencing colleagues still in Government service. These possibilities call for a strengthening of our ethics laws.

These concerns are more immediate when former officials are employed by foreign interests. As stated by Senator Strom Thurmond in his opening statement before the April 29, 1986, Judiciary Committee hearing, "(t)here is something very disquieting to me, and I suspect the great majority of Americans, about Government officials leaving public service and going to work for (or) assisting, advising, lobbying, or in any way representing a foreign interest."

S. 2334 seeks to maintain public confidence and reinforce the perception of integrity in the Federal Government by appropriate limitation of post-employment opportunities. S. 2334 strengthens our current ethics law in every category. It forbids former high level executive officials, top White House employees, Members of Congress, and Federal judges and justices from making advocacy contacts anywhere in the Federal Government on behalf of a domestic entity for 18 months after termination of employment. This restriction covers approximately 1,600 employees. (See table 1). The bill bans former executive, legislative, or judicial officials employed at a rate of pay equal to or greater than the basic rate of pay for the GS–16 level, or employed on active duty as a commissioned officer of a uniformed service assigned to a pay grade of 0–7 or above, from making advocacy contacts to any former agency within one year after employment with that department or agency has ceased. This restriction covers approximately 9,000 employees. (See table 2). According to Senator David L. Boren, this ban on top officials is necessary because a "new form of influence-peddling in Washington poses a threat to our own country's national interests and is reaching crisis proportions which must be stopped."

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S. 2334's post-employment restrictions on representation of foreign governments, foreign political parties, and organizations controlled by either are necessarily stronger. These provisions prohibit the top executive personnel, Members of Congress, and Federal judges and justices from being employed by, representing, or advising these foreign entities for three years after leaving Government. When representing foreign entitles, Federal officers employed at a rate of pay equal to or greater than the GS-16 level are banned from making any advocacy contacts to any former agency for which they worked for two years after employment with that department or agency has ceased. Like the other provisions of S. 2334, as amended, these restrictions are not permanent in duration. As a former official's access, influence, and the utility of sentitive information declines, these prohibitions are withdrawn to avoid more restriction than is necessary.

In addition, S. 2334, as amended, makes other important revisions in current law. For example, it repeals the authority of the Office of Government Ethics to designate components within an agency as "separate and distinct" when determining the scope of agency-wide prohibitions. In the absence of this change, former officials with considerable influence outside their bureau might be able to exert undue influence within their own department without regard for the restrictions of section 207, simply because their bureau is arbitrarily designated "separate".

The revised version of S. 2334, in addition, permits forfeiture of the proceeds of a section 207 violation, injunctions to halt violations, and other new enforcement tools. The bill also requires influential Federal officers to register with their former agency if they intend to lobby on behalf of any client, domestic or foreign.

S. 2334 will clarify the often confusing and weak laws and rules governing former governmental employees and will enhance the Government's ability to combat the potential for misuse of confidential information and high-powered influence. With each new conflict of interest scandal or abuse, our country is damaged and our citizens incensed. Our system of government functions best when the people believe that the Government and its officers are honest and that public policies are based on genuine political merits. In the words of the original sponsor, Chairman Thurmond, "we must take action to prevent irreparable damage to our nation and to restore public confidence and integrity in our system of government." S. 2334 will restore rationality and effectiveness to the ethics and integrity of our federal system. As Senator Thurmond further stated, this legislation will "ensure that future Federal officials and employees serve their country—not themselves or foreign interests."

V. Discussion of Post-Employment Restrictions

A. LEGISLATIVE HISTORY

General restrictions on post-employment activities have been in existence for Federal employees since 1872. The first restriction was part of an appropriations act for mail-carriers. The act, entitled the Appropriations for the Service of the Post Office Depart-

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ment, was enacted June 1, 1872. This statute made it unlawful for an officer, clerk, or employee in any executive department to act as an attorney or agent, within two years of cessation of employment, concerning any claim against the United States which was pending in the department during the officer's tenure in office. This section was the beginning of post-employment restrictions on government employees.

Since 1872, many other restrictions on post-government service employment have been enacted. Under 12 U.S.C. 232, members of the Board of Governors of the Federal Reserve Board who have not served their full term of office may not hold any office or accept employment in any member bank within two years after leaving the Board. A similar restriction is found in 12 U.S.C. 1812. Under this provision, the Board of Directors of the Federal Deposit Insurance Corporation who do not serve their full term are precluded from holding any office or employment in any insured bank for two years after leaving the Board. Under 35 U.S.C. 4, officers and employees of the Patent Office are restricted for one year after leaving the agency from applying for or requesting any right in any patent issued by the Office. 37 U.S.C. 801(b) provides that officers on the retired list of the regular armed forces may not be paid from Federal funds for three years if engaged in selling or contracting war materials to any agency of the Department of Defense, the Public Health Service, or the Coast Guard. These officers are also barred for two years after retirement from acting as an attorney by prosecuting claims against the United States and are permanently barred form pursuing claims against the United States involving matters to which the officers were "directly connected" while on active duty under 18 U.S.C. 283.

In 1978, Congress enacted a general statute to deal with post-employment conflicts of interests. The general restrictions currently in effect were enacted as part of the "Ethics in Government Act of 1978" (Pub. L. 96-28) which amends provisions codified at 18 U.S.C. 207.

The Ethics in Government Act of 1978 was introduced with 24 cosponsors on February 1, 1977, as S. 555 by Senators Ribicoff and Percy. The stated purpose of this legislation was to "preserve and promote the accountability and integrity of public officials and of the institutions of the Federal Government and to invigorate the Constitutional separation of powers between the three branches of Government." Title V of the Act established the general "revolving door" restrictions of 18 U.S.C. 207. The objectives of Title V are listed as follows: (a) to insure government efficiency; (2) to eliminate official corruption; and (3) to promote even-handed exercise of administrative discretion. 18 U.S.C. 207 was enacted to avoid even the appearance that public office was being used for personal or private gain. This avoidance was the reflection of a "deep public uneasiness with officials who switch sides" to advocate for and advise outside interests concerning matters they previously regulated or dealt with as government employees. It was recognized that public confidence in government is severely weakened by a widespread belief that Federal official use their position for personal gain after leaving office. Therefore, the authors of S. 555 argued that former officers should be precluded from the exercise of undue

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influence over their former colleagues. As Senator Ribicoff stated when introducing the bill, "restrictions of the type proposed in title V are necessary in order to prevent a former agency employee from exercising undue influence upon his former colleagues and to make existing law more enforceable." Title V was an attempt to prevent corruption and other official misconduct before it occurs as well as to penalize abusers. The statute contains criminal sanctions and an administrative remedy to deter such conduct and to encourage former government officials to exercise a higher degree of caution when contacting the Government as private citizens.

18 U.S.C. 207 was further amended in 1979. The amendment S. 869 was enacted on June 22, 1979. The purpose of the bill was "to make two clarifying amendments to section 207 of title 18, as amended, by the Ethics in Government Act of 1978." The two amendments presented in S. 869 were designed to correct language in the original text which left uncertain the types of activity which constitutes advice, consultation, or other assistance "in representing" another person. The first amendment added the words "by personal presence at" in lieu of the word "concerning". This amendment clarified that the ban on aiding and assisting applies to an individual's participation in a formal or informal appearance through physical presence.

The second amendment in S. 869 clarified that the ban on aiding and assisting applies only to matters with which the former employer was personally and substantially involved. The Committee believed at the time that without these changes, the original act might be read to preclude a former senior Government employee from almost any livelihood even remotely connected to issues regulated by Government. With the broad range of issues handled by Government employees, most potential forms of employent were suspect in the absence of some clarification of section 207. S. 869 clarified which issues an employee would be precluded from working on after leaving government service. Congress felt this change was important to guard against a stagnant civil service isolated from outside competition or infusion of new workers. Thus, S. 869 was enacted to clarify the original bill.

The provisions in 18 U.S.C. 207, as amended in 1979, are often referred to as the "revolving door" statute and are only applicable to the executive branch including any independent agency or the District of Columbia. In short, the major post-employment restrictions appearing at 18 U.S.C. 207 are: (1) a lifetime ban for certain matters in which the official participated personally and substantially while in office (18 U.S.C. 207(a)); (2) a two-year ban for certain matters under the officer's official responsibility during the last year of government service (18 U.S.C. 207(b)(i)); (3) a two-year ban for "senior" level Government officials on "aiding or assisting" private parties with their advocacy by way of personal appearance (18 U.S.C. 207(b)(ii)); and (4) a one-year ban for "senior" level Government officials on making advocacy contacts on any matter to the agency in which the official had been employed while with the Government (18 U.S.C. 207(c)).

The "revolving door" restrictions of 18 U.S.C. 207 have several basic purposes. For instance, the lifetime ban at 18 U.S.C. 207(a) is designed to protect the Government from the adverse use of vital

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information by former employees gained during their Government service. This provision prohibits Federal employees who handled a specific matter from "switching sides" by leaving the Government to work for a private party on that same matter. In addition, former employees are prohibited when representing a private party before the Government from being physically present at an advocacy hearing before the Government if the former employee had been specifically connected with the subject matter while employed with the Government. 18 U.S.C. 207(b)(i) also prohibits, for this reason, a former employee from acting on someone else's behalf in any matter that was under his "official responsibility" while he performed government service.

Another basic purpose is to deal with the disproportionate influence former government officers might have upon the decisionmaking process. Current law found at 18 U.S.C. 207(c) bans any communications by a former employee, on behalf of anyone other than the United States, with his former agency for one year after such employment has ceased.

Finally, these provisions deter a Government employee from being unduly influenced and extending favors in performance of his official duties by the lure of lucrative private employment after Government service.

B. JUDICIAL HISTORY

The limited case law on post-employment conflict-of-interest laws has shown that such restrictions are proper subjects for congressional determination, *Fox* v. *Kingsland*, 81 F. Supp. 433 (D.D.C. 1948), aff'd 180 F.2d 45 (D.C.Cir. 1950), and are not considered as "bills of attainder" prohibited under Article I, section 9 of the Constitution, *United States* v. *Nasser*, 476 F.2d 1111(7th Cir. 1973). *Fox* involved the restrictions in 35 U.S.C. 4 which formerly precluded the receipt of an interest in a patent only while a person was employed by the Patent Office. The Patent Office wanted to expand these restrictions to apply to persons who conceived of an idea while working for the Office and then filed for a patent immediately following employment termination. The District Court held that the responsibility for determining these restrictions was congressional and not judicial.

Employment restrictions on former government officers under the general ethics laws, 18 U.S.C. 207, were upheld by the Seventh Circuit against a constitutional challenge in *United States* v. *Nasser*, 476 F.2d 1111(7th Cir. 1973). In *Nasser*, a former IRS employee was convicted of violating 18 U.S.C. 207. The appellant argued that 207(a) "is a bill of attainder in violation of Article I, section 9 of the constitution because it is a legislative act that imposes "punishment on a group without judicial trial." Id. at 1115. The court disagreed with this argument. It held that 28 U.S.C. 207 was not vague and not a bill of attainder, but rather "the statute is within the classification of a rule of general applicability for the accomplishment of a legitimate legislative purpose." Id. at 1116. The court reasoned that "the purpose of protecting the Government from the improper use of information gained by former agents in the course of their agency" is clearly a proper one. The

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restrictions against acting as agent for another in a matter in which the person "participated personally and substantially as an officer or employee, is clearly a wholly rational means of pursuing that purpose".

Although Supreme Court dicta suggests that the deprivation of one's opportunity to practice a trade may be considered "punishment," the Court has held that conflict-of-interest provisions such as Section 32 of the Banking Act are not bills of attainder because Congress "was legislating with respect to general characteristics rather than with respect to a specific group of men." *United States* v. *Brown*, 381 U.S. 437, 454-455 (1965). In that case, the Court upheld the conflict-of-interest section of the Banking Act which bars certain former employees of securities firms from becoming employees of a member bank of the Federal Reserve System. The Court established that Congress was legislating generally and not punishing specific persons. Therefore, the section was not a bill of attainder. By the same token, 18 U.S.C. 207 imposes general restrictions on former governmental employees, and thus, as stated in *Nasser*, is not a bill of attainder in violation of the Constitution.

In addition to upholding the validity of 18 U.S.C. 207, the courts have also had occasion to interpret its provisions. In *United States* v. *Miller*, 624 F.2d 1198 (3rd Cir. 1980), the court held that an attorney who previously served as an assistant U.S. attorney with tax responsibilities when the Government prepared its case against a defendant, was properly disqualified from representing that defendant even though the attorney only participated by giving general advice, rather than actually supervising preparation of the case. Id. The court described section 207 as a criminal statute which holds "former employees of the Federal Government to standards more demanding than the minimal requirement." Id. at 1202.

In *CACI, Inc.-Federal* v. *United States*, 719 F.2d 1567 (Fed. Cir. 1983), the court narrowly interpreted the language "particular matter" and "personally and substantially" found in 18 U.S.C. 207. In that case, an unsuccessful bidder on a Government contract brought an action to enjoin the award of the contract to a successful bidder on the grounds that the successful bidder had formerly been employed by the agency which awarded the contract. The court held that no violation of 18 U.S.C. 207 had occurred because the subject matter in question was not part of the same "particular matter" the successful bidder had worked on while employed at the Department of Justice. As the court noted, the bidder who was a former employee of the Department of Justice, "played no role whatsoever in either developing the baseline services concept or in the formulation of the (proposal) for bids on it," and was, therefore, not in conflict when making his bid for the project. Id. at 1576. In so ruling, the court recognized that a former employee/employer relationship by itself is not enough to establish a section 207 violation. For the court to find a violation, the former employee's current activities must be linked directly to a particular subject matter handled extensively and directly by the former employee while in government employment.

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C. CONSTITUTIONALITY OF S. 2334

In examining S. 2334, constitutional issues were considered focusing on the First Amendment free speech and association clauses, the equal protection clause, the due process clause, and the bill of attainder clause. These were also the subject of testimony before the Committee in connection with S. 2334.

With regard to the First Amendment, the Committee received testimony from several witnesses. According to one view of the First Amendment, former employees would not under S. 2334, as amended, lose the right to speak for themselves, but only have certain limited encumbrances placed on their ability to collect revenues for delivering certain advocacy messages or making advocacy contacts on behalf of others. Former employees would retain the First Amendment right to express their personal views on any issue. As stated by Professor John F. Banzhaf, "former employees under this bill would not lose any First Amendment right since they would be free to express their own beliefs concerning even the issues of concern to a foreign country. The prohibition would apply only if they sought to profit from making such statements, an interest which is not constitutionally protected." In support of this view, Professor Banzhaf relied on the case of *Capitol Broadcasting Co.* v. *Mitchell*, 333 F.Supp. 582 (D.D.C. 1971).

This same reasoning applies to the First Amendment rights of association and petitioning the Government for redress of grievances. Former employees may associate with whomever they desire or may freely petition Government agencies. They are only restricted when associating or pleading on behalf of a client for profit. These prohibitions are not so broad as to deny foreign entities any effective representation, as they would not be prohibited from employing individuals other than former Federal employees.

A different analysis was offered by Messrs. Morton Halperin and Jerry Berman of the American Civil Liberties Union, testifying on S. 2334 as introduced. They took the position that Professor Banzhaf's analysis relegated the representational activities of former Government employees to the category of "commercial speech" considered in *Capitol Broadcasting*. They argued that the lobbying and representational activities regulated in the bill constitute not commercial but political activities, regulation of which is subject to "strict scrutiny" by the courts. Therefore, they contend that the regulation must be narrowly tailored to serve a compelling governmental interest.

Even if the "strict scrutiny" standard would apply, if applied, the Committee believes that S. 2334, as amended, would be found constitutional. The legislation is supported by several compelling Government interests—limiting the actuality and appearance of improper influence by former Government officials and combatting the potential for misuse of confidential information in a manner contrary to the interests of the United States. Furthermore, the legislation, as amended, is tailored to serve those compelling interests. It imposes "cooling off" periods on Government contacts of a scope and length suited to the officers affected, and it proscribes employment by foreign entities for periods during which confidential information acquired while in Government service would

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remain both useful and memorable. Accordingly, the Committee believes that S. 2334, as amended, does not unconstitutionally abridge First Amendment rights.

The Committee's position is that S. 2334 is also constitutionally acceptable under the equal protection clause. Under equal protection analysis, most distinctions between classes will be upheld by a "rational basis" test. There are two exceptions to the general rational basis test, one for legislation involving suspect classifications, and the other for legislation involving fundamental interests. Because high-level Government officials have not had a history of invidious discrimination, they are not likely to fall within any suspect classification. Similarly, S. 2334 does not affect any of the fundamental interests recognized by the Supreme Court. Since the classifications of S. 2334, as amended, are not likely to receive any heightened scrutiny, they will be subject only to the general rational basis standard. Differences in responsibility and potential influence provide at least a rational basis for distinguishing between former high level officials, officials formerly compensated at or above GS–16, and all other Federal employees. These differences were recognized in some of the changes made in S. 2334 as it was revised by the Committee. Similarly, the distinction in the bill between representation of foreign entities and representation of domestic entities is justified by the different effect these entities might have on the U.S. interests, particularly if they acquire confidential Government information. Thus, S. 2334, as amended, would satisfy equal protection requirements.

In the Committee's judgment, S. 2334 also satisfies the due process clause, which guards against depriving any person of "life, liberty, or property, without due process of law." As Professor Banzhaf stated, the only possible due process right implicated by S. 2334 is the "right to make a living." However, the Supreme Court has never recognized the "right to make a living" as a "property" right within the protection of the due process clause. In a few cases, an employee's expectation of continued employment under a tenure system has been considered a protected "property" interest. But, as Professor Banzhaf notes, "at most this means that he cannot be discharged * * * without some kind of hearing * * * a principle which clearly has no application here." Similarly, a firing can carry such stigma as to implicate "liberty" interests in continued employment in a field. Once again, however, this would only justify a hearing and has little relevance to these post-employment situations.

Furthermore, S. 2334 does not absolutely bar anyone from pursuing employment. It merely imposes a waiting period before former officials can represent interests before the Federal Government. Certainly, there is no constitutional right to be a paid lobbyist. Thus, no severe impairment of employment opportunities, nor any deprivation of liberty or property without due process of law, occurs under S. 2334, as amended. Moreover, even if there were any effect on employment opportunities, these would be outweighed by the strong public interest in deterring corruption or abuse of confidential information or influence acquired during Government service.

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In summary, the Committee concludes that S. 2334 is constitutional and will withstand any constitutional challenge.

VI. Section-by-Section Analysis

SECTION 1. SHORT TITLE

Section 1 specifies that this Act may be cited as the Integrity in Post Employment Act of 1986.

SECTION 2. STRENGTHENING THE CURRENT PROVISIONS OF SECTION 207 OF TITLE 18

Subsection (a) of section 2 makes willful violations of section 207 (a), (b), (c), as amended, punishable by fines of not more than $250,000 or imprisonment for not more than five years or both. Current law punishes knowing violations of section 207 with fines of not more than $10,000 or imprisonment for not more than two years or both. The penalties for knowing violations remain intact under this bill. Penalties for willful violations are increased. These increased penalties recognized the added culpability of deliberate, in contrast to inadvertent, violations. Both violations, whether willful or knowing, are felonies.

The existing "knowing" intent standard requires Federal prosecutors to prove the accused knew he was performing the prohibited actions. The accused need not know, however, that the actions were illegal. For instance, under 18 U.S.C. 207 (c), the Federal prosecutor would be required to show the accused knowingly represented a client as an attorney in a formal or informal proceeding before the accused's former agency within 1 year of leaving the Government. The prosecutor would not have to show that the accused knew that there was a law prohibiting such conduct.

A willful intent standard would require a Federal prosecutor to prove that the accused both knew that he was performing certain actions and that those actions were against the law. In the context of 18 U.S.C. 207(c), the prosecutor must show both that the accused represented a client before his former agency within 1 year of leaving the Government that the accused knew that this activity was illegal.

Subsection (b) of section 2 authorizes the forfeiture of any proceeds or profits acquired or received by a former employee in violation of section 207. These proceeds would be forfeitable to the United States in a civil action brought by the Attorney General or his delegate. This provision is expected to operate according to procedures and guidelines enumerated in section 881 of Title 21 of the United States Code.

Subsection (c) of section 2 repeals 18 U.S.C. 207 (e) which authorizes the Director of the Office of Government Ethics to designate components within the same agency as "distinct and separate" from the rest of the agency when determining the scope of the agency-wide prohibitions of 18 U.S.C. 207(c). In the absence of this provision, former Government employees with considerable influence outside their bureau might be permitted to engage in conduct otherwise banned by section 207(c) within their department or agency simply because their bureau has been designated "sepa-

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rate" from the rest of the department. The effect of this subsection is to ensure that the agency-wide prohibitions of 207(c) extend agency-wide. The deletion of subsection (e) from the existing Ethics in Government Act requires that subsections (f) through (j) be redesignated as subsection (e) through (i), respectively.

Subsection (d) of section 2 significantly expands the scope of 18 U.S.C. 207(c) in two major ways: first, the coverage is extended downward to include all Federal employees employed at a rate of pay equal to or greater than the basic rate of pay for the GS–16 level (i.e. equal to or greater than the rate of pay for GS–16, Step 1); second, the coverage is extended beyond the executive branch to embrace former employees of the legislative and judicial branches. Thus, individuals employed in the executive branch at a rate of pay equal to or greater than the basic rate of pay for the GS–16 level, or employed an active duty as a commissioned officer of a uniformed service assigned to a pay grade of 0–7 or above, are prohibited from making advocacy contacts to any former department or agency for which they worked for 1 year after employment with that department or agency has ceased. For example, if an employee terminates employment with one agency and is employed by another agency for 5 months before leaving public service, he or she would be proscribed from making any advocacy contacts with the second agency for 12 months and the first agency for 7 months. "Advocacy contact" as used in this report encompasses the operative language of current law found in section 207: acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States). The term "advocacy contact" would include contact in which the former official pleads or advocates on behalf of his client. However, specific contacts in which the former official did not advocate or plead on behalf of his client, but simply makes contact on behalf of another for compensation, would be included as well. Hence, the term "advocacy contact" includes any contact on behalf of another for compensation.

Subsection (d) also stengthens the prohibitions of section 207(c) with respect to individuals formerly employed in the top three executive levels, as top White House officials, as Members of Congress, or as Federal judges and Justices. These former Government officials are prohibited from making advocacy contacts concerning any matter anywhere in the Federal Government for 18 months after leaving Government service.

A more specific explanation of this rewrite of section 207 requires an examination of each component of the new subsection (c). This new provision applies to individuals "other than a special Government employee who serves for less than 120 days in a period of 365 consecutive days." This exception clause is intended to ensure that individuals are not discouraged by the prohibitions of this section from serving on blue ribbon commissions or in other temporary capacities. Specifically, the Committee recognizes that temporary bodies such as the Grace Commission on deficit reduction, the Rogers Commission that investigated the space shuttle disaster, and many other governmental entities benefit greatly

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from the temporary service of experts from the private sector. Technical experts from the private sector, who may contract or otherwise make formal contacts with the Federal Government in their private employment, should not be discouraged from rendering public service for less than 120 days by the prospect that these restrictions might interfere with their return to the private sector upon completion of the temporary assignment. The Committee is aware that the reference to the length of service by a "special Government employee" in this bill differs from the length of service referred to by other definitions of the term elsewhere in the United State Code. The direct implications of this amended version of section 207 with regard to attracting future experts into temporary governmental service warrants this difference.

The bill makes another notable change in the operative language of section 207(c). The operative language banning advocacy, lobbying, or representational contacts is conditioned by the new requirement that the prohibited contacts be "for compensation, financial gain, or other remuneration." This reflects the Committee's determination that pro bono contacts are not likely to present post-employment conflicts of interest. In the absence of profit-taking, advocacy contacts are less likely to suggest that government processes are being improperly influenced or that former officials are trading on their past access and influence for personal gain. The Committee also recognizes that many worthy charitable causes might profit from pro bono advocacy contacts made by recently departed government officials.

Although the necessity of proving that certain advocacy contacts have been made "for compensation" presents prosecutors with an additional evidentiary responsibility, the disclosure requirements of this bill will be required even for pro bono advocacy contacts for individuals described in the new 207(d)(2). Hence, many pro bono advocacy contacts will have to be conducted under intense public scrutiny. This makes it very unlikely that a former influential public official could successfully mask a compensation scheme in an attempt to avoid the restrictions of this amended subsection. Moreover, an unsuccessful attempt to do so would bring additional penalties for falsifying the disclosure statements. These disclosure rules thus should serve as an effective deterrent for attempts to evade the legal requirements of section 207(c).

The new section 207(c)(1)(A) clarifies which government entities may not be contacted by individuals covered by the advocacy ban. Under current law, employees in the executive branch are prohibited from contacting their former agency during the period of proscription. Under the bill, parallel restrictions are imposed on legislative and judicial employees. Accordingly, under the new 207(c)(1)(A)(iii), a person formerly employed by the judicial branch may not make an advocacy contact to the particular court for which he formerly worked during the period of the proscription. This restriction should be examined in the light of the exclusion found in section 5. The new 207(c)(1)(A)(i) is patterned after current law, but also includes the new term "or other entity." This addition is meant to clarify that the proscription applies to Government employees serving on commissions, boards, public corporations, and other Federal Government bodies.

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The new section 207(c)(1)(B) repeats verbatim language currently contained in section 207. This section lists exhaustively the nature of the lobbying or advocacy contacts banned within the proscription period of this section. The new section 207(c)(1)(C) is modeled after similar language in the current code section 207 with the addition of the terms "Congress," "court," and "entity" to reflect the expansions and clarifications described above.

The new section 207(c)(2) effects the 18-month ban on advocacy contacts anywhere within the Federal Government by former top executive officials, former Members of Congress, and judges and Justices. The Committee intends this language to extend the prohibitions on lobbying, advocacy, or representational contacts beyond the agency, House of Congress, or court which employed the former official to include all of Government—every executive, legislative, judicial or independent arm of the Federal Government. This language prohibits conduct described by the existing section 207 undertaken anywhere in the Federal Government within 18 months after these high level officials leave public service. The provision includes, for the reasons earlier stated, the "for compensation" language.

Subsection (d) of the current section 207 is amended by this bill to define the categories of individuals covered by the two proscription periods of the new 207(c). The new subsection (d)(1) covers all former Federal employees, regardless of which branch of Government or governmental entity employed them, employed at a rate of pay equal to or greater than the basic rate of pay for GS–16 level (step 1), including commissioned officers assigned to pay grade 0–7 or above. The Committee intends this language, like similar language used earlier in the bill, to clarify that there is no Federal Government entity whose employees are exempt from these proscriptions.

The new subsection (d)(2), 18 month ban covers employees in the top three levels of the executive service (sections 5312, 5313, 5314, of Title 5), White House officials (section 105(a)(2)(A) of Title 3), Members of Congress, and judges and Justices defined in section 451 of Title 28. This ban applies to those Government officials whose extensive influence during Government service makes them subject to a higher standard in post-employment relationship.

Subsection (e) of section 2 of this bill grants the Attorney General or his delegate the authority to enjoin violations of the provisions of section 207. It is anticipated that the Attorney General will take injunctive action if he has reason to believe that a person is engaging in or is about to engage in a violation of section 207, and the Court will order an injunction if it finds that the person's activity does or would violate section 207. This provides the Attorney General with an additional enforcement tool to ensure compliance with this act. It does not preclude any other remedy already available to the Attorney General.

Section 2 of the bill, which strengthens the existing provisions of section 207, leaves untouched those portions of the Ethics in Government Act not specifically amended by this revision. Thus, the proscriptions of 207(a) and (b), for instance, are undisturbed and will continue to operate to deter those post-employment conflicts of interest they currently proscribe.

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SECTION 3. REPRESENTATION OF FOREIGN GOVERNMENTS

Although modeled after section 207, section 3 of this bill contains a new set of restrictions governing the post-employment representation of or employment by foreign governments, foreign political parties, or entities under the control of either. This section prohibits the top executive officials, Members of Congress, and Federal judges and justices from being employed by these foreign entities anytime within 3 years of their departure from Government service. It also prohibits any former Federal officials covered under new subsection (d)(2) of section 207 (as described earlier) from making any advocacy contact to any former agency for which they worked on behalf of a foreign entity within 2 years of leaving that agency. This section also strengthens the Foreign Agents Registration Act to require disclosure of matters handled for foreign clients and to require an affirmation that no confidential government information has been disclosed to foreign entities.

Subsection (a) of section 3 strengthens the Foreign Agents Registration Act (FARA). Section 2 of FARA is amended by requiring that former high-level Government officials make additional disclosures as part of the foreign agents registration process. The additional disclosures include the identity and nature of any foreign employer, the frequency of contact with such principal, the actions taken or intended to influence Federal Government processes, and a declaration that the registrant has not disclosed any confidential government information or tactics to that employer. Because FARA has operated for years, these additional disclosures or former Government officers representing foreign entities should not prove burdensome. These additional disclosure requirements are intended to be interpreted reasonably. Registrants should not be expected, under normal circumstances, to describe every insignificant detail of the minute-by-minute activities "undertaken to influence" Government officers on behalf of a foreign entity.

The required declaration that confidentiality has been preserved should also be construed and implemented reasonably. For instance, this should not bar former Government employees from disclosing information that has been previously made public pursuant to the procedures of the Freedom of Information Act.

This subsection sets the penalty for falisfying or failing to fully disclose information required in this modified FARA requirement at a fine of not more than $10,000 or imprisonment for not more than 5 years or both. The language of this section is taken directly from 18 U.S.C. 1001, the Federal fraud and false statements statute. This provision is, accordingly, intended to govern those disclosures in lieu of 18 U.S.C. 1001. Because it is patterned after that statute, however, it will govern under the same general principles developed through years of experience with the general Federal false statements law.

The language of subsection (b) of section 3 originally included in the compromise substitute is as follows:

(b) DISCLOSURE OF INTERNATIONAL TRADE NEGOTIATIONS.—(1) Section 798 of title 18, United States Code, as added by 65 Stat. 719, is amended—

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(A) by striking out the caption and inserting in lieu thereof the following:

"§ 798. Disclosure of classified information and international trade negotiations";

"(c)(1) Whoever knowingly and willfully communicates, furnishes, transmits or otherwise makes available to another person, or publishes, or uses in any manner prejudicial to the interest of the United States or for the benefit of any foreign government to the detriment of the United States any information, not publicly available, concerning international trade negotiations conducted by the United States shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(2) This subsection shall apply to any officer or employee of any agency or department of the United States.".

This original language is not included in the compromise substitute approved by the Committee. Some Judiciary members raised concerns about the original language of the section immediately before the Committee vote on the bill. To prevent delaying approval of the entire compromise substitute, Chairman Thurmond agreed that the language of this section would be redrafted and included in the bill on the Senate floor.

The bill creates a new subsection (3) in section 207. This new subsection (3) is a 2-year prohibition on advocacy contacts on behalf of a foreign entity by any of the former Federal officials described in paragraph (1) of the new subsection (d). Thus, all Federal officers compensated at or above GS–16 Step 1, are banned for an extra year form making the contacts barred by the operative language of section 207 on behalf of a foreign entity. Otherwise, this provision operates identically to the 1-year ban contained in the new section 207(c)(1) earlier described. Each of the explanations offered in connection with the new section 207(c)(1) apply as well to this new subsection (3).

Section 207(c) is further amended by adding a new subsection (4). This new subsection applies to those former Federal officials described in paragraph (2) of the new subsection (d), namely, the top three executive levels, top White House officials, Members of Congress, and judges and justices of the United States. This provision includes the "for compensation, financial gain, or other remuneration" language analyzed in connection with the new 207(c)(1) and (2). That analysis applies to this provision as well.

Beyond these similarities, this new subsection 207(c)(4) differs in approach from the rest of the section 207(c). It establishes a 3 year proscription on employment by, representation of, or acting as advisor for any foreign entity. This blanket prohibition on compensated employment by a foreign entity reflects the Committee's judgment that high-level Federal officials with prior access to sensitive information should be prevented from entering employment that could compromise vital national interests. Current law clearly precludes former Government officers from disclosing classified information, but these laws do not preclude them from offering advice based on that protected information. Beyond the threat that former high level officials might advise foreign clients on the basis of sensitive knowledge acquired during their tenure in Government, the

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Committee felt that American citizens need to be assured that these privileged officers will not be permitted to use access and knowledge gained while serving in the government to further interests potentially adverse to those of the United States. The Committee also seeks to reinforce public confidence that influential officers currently in government service are not making decisions in the hope of future gain in the employ of a foreign government.

This 3-year employment bar will provide a "cooling off" period during which sensitive information in the knowledge of former employees will age and lose immediate significance. Moreover, the former official's place in the public eye and influence with former colleagues will naturally fade over that period. Thus, the potential for post-employment abuse of influence and sensitive information should have diminished greatly after 3 years.

Subsection (d) of section 207 is further amended by the addition of a paragraph (4). This new paragraph creates an exemption, first proposed by Senator Biden, from all post-employment restrictions of the new section 207(c).

It is drawn from similar exemptions in section 3 of FARA. This exemption applies to all former Federal officers covered by section 207 as amended. This exemption has three parts. The first permits conduct otherwise barred by 207(c) for the purpose of soliciting or collecting funds and contributions to be used only for medical aid and assistance, or for food and clothing to relieve human suffering. This first exemption, however, only excuses the described conduct when it complies with and is subject to subchapter II of chapter 9 of title 22, section 448. The second exemption permits conduct otherwise barred by section 207(c) that furthers a bona fide religious, charitable, scholastic, academic, scientific, or artistic pursuit. The third exemption permits conduct otherwise barred by section 207(c) that furthers the purposes of an international organization of which the United States is a member. For purposes of this exemption, the Committee intends Interpol to be considered as an international organization which a former official could represent without fear of violating section 207(c).

Paragraph (c)(3) of section 3 of this bill creates a new subsection 207(k). This new 207(k) defines the term "foreign entity" as it is used throughout the new section 207. "Foreign entity" means a foreign government or agency thereof, a foreign political party or organization, or a foreign organization substantially controlled by a foreign government or foreign political party. By including within the term "foreign entity" the term "foreign political party," the Committee intends to cover those political organizations within existing states which are represented in the Government or vie for representation or otherwise contribute to the domestic and foreign policy of the foreign government. The Committee also intends for these terms to include political movements or organizations which may not be recognized within any particular existing state—the Palestine Liberation Organization, for example.

The issue of whether or not a "foreign organization" is "substantially controlled" by foreign governments or foreign political parties is a factual issue determined on a case by case basis. The phrase "substantially controlled" by a foreign government would be broad enough to include an organization created to defeat the

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proscriptions of section 207(c). A foreign corporation or business which receives subsidies from a foreign government would not automatically be "substantially controlled" by a foreign government. If the subsidies are legitimate Government aid (i.e. low interest Government loans) that enable a bona fide business to continue or improve its operation, then the restrictions of section 207(c) would not apply on the basis of those subsidies alone. However, if by virtue of the subsidies the foreign government exercises "substantial control" over the business, then section 207 proscriptions apply.

SECTION 4. DISCLOSURE OF DOMESTIC LOBBYING

This section creates a new subsection (l) within section 207 designed to require disclosure of domestic lobbying practices similar to the disclosure currently required for foreign lobbying under the Foreign Agents Registration Act. This section prohibits those individuals described in the new subsection (d)(2) from engaging in any of the activities proscribed by section 207(c) until they have filed with their former agencies a complete and accurate registration statement. This prohibition may be enforced by the Attorney General under the new authority to enjoin violations of section 207(c) granted in the new subsection (j).

The obligation to file, in duplicate, this registration must be satisfied within 10 days after a former employee accepts initial employment to make advocacy contacts. The Committee intends that the Department of Justice will promulgate a standard form for each of the agencies to use for registration. Each agency, however, will have the authority to add additional sections to its own form to satisfy any particular needs it may have. Similarly, the Committee anticipates that the duplicate form submitted to the agency will be forwarded to the Department of Justice so that the Department may maintain a central file of all registration forms that will be open to inspection by the public.

The new paragraph (2) of subsection (l) describes the minimum information required to be disclosed. These include generally: (1) the registrant's name, former agency position, and all current business and residence addresses; (2) a listing of the clients employing the registrant to make advocacy contacts; a listing of the registrant's employees and the work done by each; and a statement of the nature of the registrant's business; (3) copies of the employment contracts or agreements setting forth the registrant's employment obligations and an explanation of how these obligations, including political activities, are to be met; (4) a listing of the compensation or disbursements received by the registrant pursuant to his employment; and (5) any further clarifications to ensure that the registration statement is not misleading.

The requirement is to be implemented reasonably. This registration process should not be overly burdensome. It should operate to supply each agency with adequate information about the representational work performed by its former top employees covered by this bill. This will put the agency on notice as to the nature of a former employee's current employment obligations and will assist the current agency officials in avoiding conflicts of interest. Such

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information is necessary to inform the agencies of a former employee's clients and employment status should be disclosed on these forms. Disclosure of volumes of records should not be necessary for this purpose. For example, those clients and contracts directly serviced by the registrant should be covered by this disclosure requirement. The requirement should not be expected to extend to all clients of a covered former employee's firm, only those clients served by the covered employee.

Paragraph (3) of the new subsection (1) requires registrants to update their filings every 6 months. These supplementary filings should be on a form prescribed by each agency based on a standard form promulgated by the Department of Justice. The head of each agency is authorized to require any particular registrant or all registrants to file more frequent supplementary statements under appropriate circumstances.

Paragraph (4) of subsection (1) clarifies that the registration statement and supplementary filings are to be executed under oath.

Paragraph (5) of the new subsection (1) ensures that the mere filing of a registration statement or supplement is not to be deemed full compliance with subsection (1), nor in any way an indication that the agency has accepted the submission as adequate.

Paragraph (6) specifies that the obligation to file disclosure statements expires 5 years after an individual leaves government service. Accordingly, those former employees who enter representational employment immediately after leaving the Government will be required to file no more than the initial statement and nine of the briefer supplements.

Paragraph (7) ensures that the inspector general of each agency will notify the Attorney General of any violations of this subsection. This will facilitate the enforcement discussed earlier.

SECTION 5. EXCLUSION FOR ATTORNEYS APPEARING IN JUDICIAL PROCEEDINGS

This section permits an attorney, who would otherwise be forbidden by section 207(c) from making advocacy contacts in the Federal Government, to represent a client in a judicial proceeding before a court of the United States. In the absence of this provision, attorneys who take a high level Government position [defined by (d)(2)] could forfeit their only livelihood for the proscribed period after leaving Government service. Such a result could discourage many talented individuals from entering public service. This section ensures that individuals in this position would not be able to make any advocacy contacts to any executive or legislative body, but could return to the courtroom on judicial business on behalf of a client. The rationale for this exclusion is that impartial judges and juries can be expected to make decisions without regard to whether an attorney appearing before them is a former Federal official. This will, in the view of the Committee, provide an adequate check against any abuses of influence or confidential information. This provision appropriately balances the avoidance of disincentives for Government service against the prospect of corruption.

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SECTION 6. EXEMPTION FROM PROHIBITIONS OF SECTION 207

During the debates on this bill, the Committee recognized that there may be occasions when it would be in the best interest of the United States to have a former high level government employee in the employ of a foreign entity or be allowed to make contacts on behalf of such an entity. This new subsection (n) provides a procedure for those instances. It authorizes the Attorney General to grant an exemption from any of the prohibitions of 207 (a), (b), or (c) when the exemption would serve an overriding public interest or the general public welfare or the interests of the Federal Government. The Attorney General should, for example, grant an exemption where a fledgling democracy invites a former high-ranking official to advise it on the drafting of a new constitution. These determinations would be solely within the discretion of the Attorney General. Any exemption, however, would have to be printed in the Federal Register prior to the effective date of the exemption and would have to be periodically republished (at least once every 6 months) during the pendency of the exemption.

SECTION 7. EFFECTIVE DATE

Section 7 of this bill makes these amendments effective and applicable to every Federal official covered by the amendments six months after the date of enactment. This will provide current Federal officials with an opportunity to make appropriate career decisions prior to the time these amendments take effect. The provisions of current law will continue to apply to any person who has already terminated Federal employment before this law goes into effect or who terminates such employment within six months after enactment.

VII. Agency Views

In testifying before the Committee concerning S. 2334, on June 18, 1986, prior to the compromise substitute, Stephen S. Trott, Assistant Attorney General, Criminal Division, voiced two primary concerns of the Justice Department regarding the bill. These concerns were that the bill would repeal a number of important conflict of interest provisions in current law and would put in their place sweeping prohibitions that would be both too broad and too narrow in light of the legislation's purposes. These concerns were also raised by witnesses testifying on behalf of the Departments of State and Defense.

Regarding the initial concern (i.e., repeal of existing post-employment restrictions), Mr. Trott testified that sections 207(b) and 207(c) of title 18 U.S.C. had proved to be useful tools for controlling post-employment conflicts of interest. He noted that if S. 2334 were enacted, the 2 year ban in section 207(b) against a former employee's acting in someone else's behalf, with or without compensation, in any matter that was under his official responsibility would be reduced to 1 year in cases of domestic representation and eliminated entirely where such representation was uncompensated. Likewise, he noted the 1 year no-contact rule in section 207(c), under which certain high Government officials are barred for 1 year from com-

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municating with their former agency in someone else's behalf on any matter, would no longer apply where the representation was uncompensated. This, the Department felt, would leave largely unaddressed the very problem for which section 207(c) was enacted. Thus, the Justice Department counseled against repealing these provisions and argued that the approach embodied in the post-employment restrictions in current law—which links post-employment restrictions to an employee's actual experience or position—better serves the Government's purpose of avoiding conflicts and the improper exercise of influence.

Concerning the breadth of S. 2334, as originally introduced, Mr. Trott, testified that many provisions reached out to situations that would not involve a conflict of interest or raise an ethical question. He raised specific concerns about the blanket 1-year prohibition applicable to all former Government employees, the 2-year ban applicable to all former employees prohibiting employment in any capacity with a "foreign entity", and the lifetime ban applicable to high level officials prohibiting employment with, lobbying for, assisting, or advising foreign "entities" under any circumstances. The Department felt that these provisions went far beyond what might be regarded as reasonable prophylactic measures to prevent former Government employees from sharing privileged information with foreign governments or exercising improper influence because of their former Government connections.

Mr. Trott did, however, express support for the bill's expansion of the prohibition of section 207 to include employees of the legislative and judicial branches of government in addition to those in the executive branch.

A letter setting forth many of these same concerns, received on June 11, 1986, states:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, June 11, 1986.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to express the grave concerns of the Department of Justice regarding planned Committee action on S. 2334, the "Integrity in Post Employment Act of 1986."

As you know, we have serious reservations with respect to certain aspects of this legislation as introduced. Our concerns are exacerbated by the fact that major amendments are expected to be offered to this bill during Committee mark-up which could dramatically alter the bill as introduced. Not only have these amendments not been the subject of a hearing, we understand that many are not even available in printed form for review and comment in advance of the mark-up session.

S. 2334 represents a drastic departure from conflict-of-interest laws which have been in place for over a century, in that it repudiates the traditional restrictions on post-government service related to matters with respect to which the employee exercised substantial responsibility, in favor of a total ban upon certain private employment without regard to the employee's responsibilities when in

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government service. We believe the bill already has severe overbreadth problems. Even more important, however, it appears that possible Committee amendments could result in reporting of a bill which bears little relation to the legislation which was the subject of the hearing.

For these reasons, we would respectfully urge that the Committee set S. 2334 and all anticipated amendments down for a hearing at which we and other interested parties would have the opportunity to submit a comprehensive analysis of S. 2334 and all proposed amendments. Given the great importance of this issue, we sincerely hope that you will see fit to postpone Committee action on S. 2334 until a further hearing can be held. In short, we are very strongly of the view that this legislation is simply too important to be processed without thorough analysis and review of all its aspects, and of the effects which such legislation could have upon the United States Government.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

The substitute amendment adopted by the Full Committee after the work of the ad-hoc committee chaired by Senator Hatch substantially satisfies the concerns raised by the Department of Justice. The substitute leaves section 207(a) and (b) in place. It retains the basic principle that post-employment restrictions ought to be linked to an employee's actual experience or position. The substitute also narrowly tailors its proscriptions to address only situations with potential conflicts of interest. It restricts no employees compensated below GS-16 and limits other restrictions to time frames during which an influential former employee is likely to retain access, influence, and an immediate knowledge of confidential or sensitive information.

VIII. COST OF THE LEGISLATION

In accordance with paragraph 11(a), Rule XXVI, Standing Rules of the Senate, the Committee offers the following report of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC., July 15, 1986.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2334, the Integrity in Post Employment Act of 1986, as ordered reported by the Senate Committee on the Judiciary, June 26, 1986. Enactment of this bill would result in no significant cost to the Federal Government and would not affect the budgets of state or local governments.

The bill would prohibit Members of the Congress and officers and employees of any branch of the United States Government from attempting to influence the United States Government or from repre-

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senting or advising a foreign entity for a specified period after such officer or employee leaves government service. S. 2334 would also amend the Foreign Agents Registration Act to require, in addition to the existing registration requirements, disclosure of certain information concerning actions taken on behalf of foreign principals by certain officers or employees of the United States.

CBO estimates that the occupants of about 1800 positions in the Federal Government would be subject to the registration requirements of this bill if, after leaving the government, they sought to lobby agencies on behalf of foreign governments. It is not possible to estimate how many such employees will leave federal government service, and would be required to register with federal agencies as lobbyists for foreign governments; however, the number is likely to be small. Based on information from the Office of Government Ethics and several Executive Branch departments, CBO estimates that the new registration and recordkeeping requirements of the bill would not result in significant additional costs to the government.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

IX. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), rule XXVI, of the Standing Rules of the Senate, the Committee has concluded that the bill may impose slight regulatory costs upon a small number of businesses and individuals that lobby the Federal Government.

The regulatory aspects of this legislation require former Federal officials covered by this bill who lobby the U.S. Government to file a registration form with their former agency. The Committee intends for the Department of Justice to promulgate guidelines for each agency to use in preparing a registration form. Each agency, however, will have the authority to prescribe its own form.

The Committee intends that the registration requirement be implemented reasonably. Disclosure of volumes of records should not be necessary. Registrants are required to update their filings every 6 months with the obligation to file disclosure statement expiring 5 years after an individual leaves government service. Accordingly, only the initial statement and nine brief supplements would have to be filed over the 5 year period.

The amount of time to fill out the form, the financial costs required, and the additional paperwork would not be overly burdensome.

The regulatory impact on the Federal Government to prepare the disclosure form would be minimal.

X. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing laws proposed to be made by S. 2334 are shown as follows: Existing law to be omitted is en-

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closed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman.

UNITED STATES CODE ANNOTATED

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Title 18—Crimes and Criminal Procedure

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CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

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Sec.
207. Disqualification of former officers and employees; disqualification of partners of current officers and employees.

* * * * * * *

§ 207. Disqualification of former officers and employees; disqualification of partners of current officers and employees

* * * * * * *

[(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral written communication on behalf of anyone other than the United States, to—

[(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

[(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

[(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—]

(c) Whoever, other than a special Government employee who serves for less than 120 days in a period of 365 consecutive days—

(1) having been so employed as specified in paragraph (1) of subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, for compensation, financial gain, or other remuneration to—

(A)(i) the department, agency, or other entity in which the person served as an officer or employee;

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(ii) the Congress if the person was employed by the Congress; or

(iii) the court if the person was employed by the judicial branch, and

(B) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

(C) which is pending before the department, agency, entity, Congress, or court or in which the department, agency, entity, Congress, or the court has a direct and substantial interest, or

(2) having been so employed as specified in paragraph (2) of subsection (d) of this section, within eighteen months after termination of employment, with the intent to influence makes any oral or written communication to any Member of Congress, officer or employee of the United States, including a special Government employee, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States, or an officer or employee of a Government corporation, Government controlled corporation, or an independent establishment as defined in section 104 of title 5, on behalf of another person (other than the United States) for compensation, financial gain, or other remuneration, or

(3) having been so employed as specified in paragraph (1) of subsection (d) of this section, within two-years after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of a foreign entity for compensation, financial gain, or other remuneration to—

(A)(i) the department, agency, or other entity in which the person served as an officer or employee;

(ii) the Congress if the person was employed by the Congress; or

(iii) the court if the person was employed by the judicial branch; and

(B) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

(C) which is pending before the department, agency, entity, Congress, or court or in which the department, agency, entity, Congress, or the court has a direct and substantial interest, or

(4) having been so employed as specified in paragraph (2) of subsection (d) of this section within three years after such employment has ceased is—

(A) employed by;

(B) represents; or

(C) advises,

a foreign entity for compensation, financial gain, or other remuneration—

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shall be fined not more than $10,000 or imprisoned for not more than two years, or both. *Whoever willfully violates subsection (a), (b), or (c) shall be fined not more than $250,000 or imprisoned not more than five years, or both. Any proceeds received in violation of the provisions of subsection (a), (b), or (c) shall be subject to forfeiture to the United States in a civil action brought by the Attorney General.*

(d) [(1) Subsection (c) of this section shall apply to a person employed—

[(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

[(B) on active duty as a commissioned officer of a uniformed service assigned to pay grade of 0–9 or above as described in section 201 of title 37, United States Code; or

[(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS–17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay 0–7 or 0–8, as described in section 201 of title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.]

(1) Subsection (c)(1) of this section shall apply to any employee of the Congress, officer or employee of the United States, including a special Government employee, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States, or an officer or employee of a Government corporation, Government controlled corporation, or an independent establishment as defined in section 104 of title 5—

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(A) employed at a basic rate of pay equal to or greater than the basic rate of pay for GS-16 of the General Schedule as prescribed by section 5332 of title 5; or

(B) employed on active duty as a commissioned officer of a uniformed service assigned to pay grade of O-7 or above as described in section 201 of title 37.

(2) Subsection (c)(2) of this section shall apply to any person—

(A) employed in a position listed in section 5312, 5313, or 5314 of title 5 or under section 105(a)(2)(A) of title 3; or

(B) who serves as a Member of Congress, or

(C) who serves as a judge of the United States as defined in section 451 of title 28.

[(2)] *(3)* The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is—

* * * * * * *

(4) The prohibition provided in subsection (c) shall not apply to a Member, officer, or employee engaging only in—

(A) the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with the subject to the provisions of subchapter II of chapter 9 of title 22, United States Code, and such rules and regulations as may be prescribed thereunder;

(B) activities in furtherance of bona fide religious, charitable, scholastic, academic, or scientific pursuits or of the fine arts; or

(C) activities in furtherance of the purposes of an international organization of which the United States is a member.

[(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.]

[(f)] *(e)* The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

[(g)] *(f)* Whoever, being a partner of any officer or employee of the executive branch of the United States Government, of any in-

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dependent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than $5,000 or imprisoned for not more than one year, or both.

[(h)] *(g)* Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

[(i)] *(h)* The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is hereby received, other than that regularly provided for by law or regulation for witnesses.

[(j)] *(i)* If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

(j) A violation of this section may be enjoined at the suit of the Attorney General.

(k) For purposes of this section the term 'foreign entity' means—

(1) a foreign country;

(2) a foreign political party; or

(3) a foreign organization substantially controlled by a foreign country or foreign political party.".

(l)(1) No person having been employed as provided in subsection (d)(2) of this section shall lobby the United States on behalf of an-

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other person other than the United States unless he has filed with the agency or department in which such person served a true and complete registration statement and supplements thereto as required by this subsection. Except as provided in this subsection, every person who agrees to lobby on behalf of another person other than the United States shall, within ten days thereafter, file with the agency or department in which such person served, in duplicate, a registration statement, under oath on a form prescribed by the agency or department in which such person served. The obligation of a former Government official or employee to file a registration statement shall, after the tenth day after agreement to lobby, continue from day to day, and termination of such status shall not relieve such officer or employee from his obligation to file a registration statement for the period during which he lobbys the United States.

(2) The registration statement required by paragraph (1) shall include the following which shall be regarded as material for the purposes of this section:

(A) Registrant's name, former association with the agency or department, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses, if any;

(B) A comprehensive statement of the nature of registrant's business and a list of all clients employing the registrant to lobby; a complete list of registrant's employees and a statement of the nature of the work of each;

(C) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is employed to lobby the United States; a comprehensive statement of the nature and method of performance of each such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant, including a detailed statement of any such activity which is a political activity;

(D) The nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received within the preceding sixty days from each person the registrant, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received; and

(E) Such further statements and such further copies of documents as are necessary to make the statements and in the registration statement and supplements thereto, and of the documents furnished therewith, not misleading.

(3) Every former Government employee or officer who has filed a registration statement required by this subsection shall, within thirty days after the expiration of each period of six months succeeding such filing, file with the agency or department in which such person served a supplement thereto under oath, on a form prescribed by the agency or department in which such person served, which shall set forth with respect to such preceding six months' period such facts as the agency or department in which such person served may deem necessary to make the information required under paragraph (1) accurate, complete, and current with respect to such period. If the head of the agency or department in which such

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person served determines that it is necessary to carry out the purposes of this subsection, the head may, in any particular case, require supplements to the registration statement to be filed at more frequent intervals in respect to all or particular items of information to be furnished.

(4) The registration statement and supplements thereto shall be executed under oath.

(5) The fact that a registration statement or supplement thereto has been filed shall not necessarily be deemed a full compliance with this subsection and the regulations thereunder on the part of the registrant; nor shall it indicate that the agency or department in which such person served has in any way passed upon the merits of such registration statement or supplement thereto; nor shall it preclude prosecution, as provided for in this subsection, for a willful failure to file a registration statement of supplement thereto when due or for willful false statement of a material fact therein or the willful omission of a material fact required to be stated therein or the willful omission of a material fact or copy of a material document necessary to make the statements made in a registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(6) The obligation to file statements under this subsection shall terminate five years after the registrant terminates Federal employment.

(7) Any violation of this subsection shall be reported to the Attorney General by the Inspector General of the agency or department which learns of such violation.

(m) The prohibitions of subsections (b) and (c) shall not apply to an attorney appearing in a judicial proceeding before a court of the United States.

(n)(1) Notwithstanding any other provision of this section, the Attorney General may grant an exemption from the prohibitions of subsections (a), (b), and (c) of this section to any individual for conduct occurring after the grant of such exemption if the Attorney General determines that such an exemption would—

(A) serve the overriding public interest or general public welfare; or

(B) the interests of the Federal Government.

(2) Any exemption granted under paragraph (1) shall be published in the Federal Register—

(A) prior to the grant of the exemption; and

(B) at least once every six months while such exemption is in effect.

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FOREIGN AGENTS REGISTRATION ACT—AMENDMENTS

For Legislative History of Act, see p. 2397

PUBLIC LAW 89-486; 80 STAT. 244

[S. 693]

An Act to amend the Foreign Agents Registration Act of 1938, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

* * * * * * *

SEC. 2. Section 2 of such Act is amended as follows:

* * * * * * *

"(f) The Attorney General may, by regulation, provide for the exemption—

* * * * * * *

"(g)(1) In addition to the registration requirements of subsections (a) through (e) of this section, any officer or employee of the United States as identified in subsection (d)(2) of section 207 of title 18, United States Code, shall be required in any statement filed under this section to—

"(A) disclose the identity and nature of any foreign principal for which such officer or employee acts as an agent, representative, employer, or servant;

"(B) disclose the frequency of contact with such foreign principal;

"(C) disclose the actions taken or intended to be undertaken to influence members of Congress or officers or employees of the United States on behalf of such foreign principal; and

"(D) include a declaration that the registrant has not disclosed confidential Government information or tactics.

"(2) Whoever knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device any information required by this subsection to be included in a registration statement shall be fined not more than $10,000 or imprisoned not more than five years, or both.".

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MINORITY VIEWS OF MR. CHARLES McC. MATHIAS, JR.

Recent events have caused widespread concern about former Federal officials engaged in improper and unethical lobbying. I agree that we can neither condone nor tolerate the practice of using Federal employment to gain privileged information to be later used for profit in the private sector. Neither can we tolerate the practice of selling access and influence, to the possible detriment of our country.

Nonetheless, I oppose S. 2334. I do not believe that the first response to these problems ought to be the enactment of a new, burdensome Federal criminal statute. Instead, I believe that our first response ought to be aggressive and strict enforcement of the laws we now have on the books.

The plain fact is that some of the activity that troubles us is protected by the First Amendment to the Constitution. The activity involves freedom of association and communications between the government and the governed. Accordingly, it cannot be excessively regulated if we are to remain true to the Bill of Rights.

At the same time, it is important to point out that much of the activity that has swelled the most recent tide of controversy over influence peddling is already against the law. During the 2 days of hearings on this measure, no one presented evidence demonstrating that the current law is inadequate to the task. More importantly, no one focused on any particular deficiencies in the current law that needed immediate attention. And while this bill may satisfy our urge to do something in response to a few well-publicized cases, I am disappointed that my colleagues have concluded that more law, rather than law enforcement, will end the abuse. The real way to curb those who abuse their public trust as a catapult to material reward is to investigate the abuse, to prosecute it, and to punish it.

It is also disappointing that the Committee persists in legislating, not just by regulating what former government employees may do, but by restricting for whom they may work. That approach will hurt both the Federal Government and the American people. It will make it harder for each of the branches to recruit and retain the best employees. It will discourage the development of future "citizen statesmen" of the sort that have made such a contribution to our nation's history. And it will inhibit former Government officials from undertaking projects that may benefit the national interest and improve the lives of less fortunate people in other countries.

Despite my opposition, I must point out that the proposal that the Committee is reporting to the Senate is a vast improvement over that which was initially submitted to the Committee. It has benefitted greatly from the hard work of the members of the ad hoc subcommittee established by Chairman Thurmond, and particularly from its chairman, Senator Hatch. But in my view, it is

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still unwise legislation which will hinder rather than aid our efforts to eradicate influence peddling and to curb harmful information leaks.

This proposal, unlike its predecessor, does not discard the carefully crafted provisions of existing law under the Ethics in Government Act. But it does engraft onto existing law a sweeping, intrusive, burdensome domestic disclosure system that the Federal Government is completely unprepared to administer, and that may cross over the limits permissible under the First Amendment.

This proposal, unlike its predecessor, does not make it a crime to buy Israel Bonds or to volunteer one's skills to help an underdeveloped country tackle its medical or social problems. But it does flatly prohibit some of the most talented and valuable federal employees—those who are not necessarily independently wealthy and can't always work pro bono—from putting their skills to work for foreign countries, for years after leaving government service. This proposal still makes it a crime for some former officials to work for a foreign government, even if what they do has nothing to do with lobbying or with the skills they acquired during their tenure with the government.

This proposal, unlike its predecessor, does not cripple the career plans of those federal employees in grades GS 11 through 15. But it does impose broad, sweeping and generally unnecessary restrictions on the employability of thousands of their co-workers in higher grades.

Another reason why the Committee should not have reported this bill is that it is not ready. Even if this bill were noncontroversial, it simply needs more work.

The ink was not dry on the bill when it was voted out of Committee. Further substantive changes were telephoned to my staff an hour after the Committee had been scheduled to meet to mark up the bill. Only then was it made clear, for example, that the drafters of this substitute intend to make it a crime for a former Government official to work for UNESCO, which is an international organization of which the United States is not a member.

If my colleagues seek further evidence that this bill deserves additional scrutiny, they need look no further than page 6 of the bill reported by the Committee. On the last two lines, one finds the words, "This section to be redrafted and included at a later date." Even the most innocuous and noncontroversial bill is difficult to mark up on the Senate floor. But this section appears to involve a new criminal provision outlawing certain disclosures of confidential Government information. Because certain undefined forms of speech will become a criminal offense, I could not help but conclude that the bill was moved in unnecessary haste. More importantly, I am disturbed that the Judiciary Committee waived its duty by choosing to "report now, and draft later."

Finally, it is incongruous for us to attack aggressively only certain types of influence peddling while leaving others free to work with impunity. This bill is premised on the assumption that is inappropriate for legislators in Washington to sit down to discuss policy with a former colleague who represents some private interest. But even if this bill were enacted, it would remain legal to seek to influence the legislator by handing him a campaign contribution

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on behalf of a Political Action Committee organized by that private interest. The "crisis of liberty" that resulted from the excessive level of campaign contributions is real and pressing. Our energies would be better directed toward attacking this problem, rather than posturing on an issue that has a limited record of abuse.

In conclusion, I appreciate the hard work that has gone into improving this legislation, and applaud the progress that has been made. Nonetheless, I cannot support this bill, and will continue to vote against it.

CHARLES MCC. MATHIAS, JR.

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